

## HEALTH MAINTENANCE ORGANIZATION AMENDMENTS OF 1978

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OCTOBER 13, 1978.—Ordered to be printed

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Mr. STAGGERS, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 2534]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2534) to revise and extend the provisions of title XIII of the Public Health Service Act relating to health maintenance organizations, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

#### SHORT TITLE, REFERENCE TO ACT

*SECTION 1. (a) This Act may be cited as the "Health Maintenance Organization Amendments of 1978".*

*(b) Whenever in this Act (other than in section 14) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.*

#### EXTENSION OF PROGRAM

*SEC. 2. (a) Section 1304(j) is amended (1) by striking out "may be made through September 30, 1978;" and (2) by striking out "1979" and inserting in lieu thereof "1981".*

*(b) Section 1305(d) is amended by striking out "1980" and inserting in lieu thereof "1981".*

(c) Section 1309(a) is amended (1) by striking out "and" after "1977," and (2) by striking out the semicolon and all that follows in that section and inserting in lieu thereof the following: ", \$31,000,000 for the fiscal year ending September 30, 1979, \$65,000,000 for the fiscal year ending September 30, 1980, and \$68,000,000 for the fiscal year ending September 30, 1981."

#### INITIAL DEVELOPMENT

SEC. 3. (a) The first sentence of section 1304(b)(2) is amended by striking out "includes" and inserting in lieu thereof "means the establishment of a health maintenance organization, the expansion of the services of a health maintenance organization, or the".

(b)(1) The first sentence of section 1304(b)(3) is amended by striking out "in the one-year period beginning on" and inserting in lieu thereof "incurred in a period not to exceed three years from".

(2) The second sentence of such section is repealed.

(c)(1) Subparagraph (A) of section 1304(f)(2) is amended to read as follows:

"(A) \$1,000,000 through September 30, 1979, and \$2,000,000 thereafter, or".

(2) Section 1304(f) is amended—

(A) by striking out "The amount" in paragraph (2) and inserting in lieu thereof "Except as provided in paragraph (3), the amount";

(B) by striking out "(except as provided in paragraph (3))" in paragraph (2); and

(C) by inserting after "(3)" in paragraph (3) the following: "The cumulative total of grants made to, contracts entered into with, and principal of loans guaranteed for, a health maintenance organization under subsection (b) of this section may not exceed \$1,000,000 through September 30, 1979, or \$2,000,000 thereafter."

(d) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1978.

#### INITIAL OPERATING LOANS AND LOAN GUARANTEES

SEC. 4. (a) Section 1305(b)(1) is amended by—

(1) striking out "\$2,500,000" and inserting in lieu thereof "\$2,500,000 (or \$4,000,000 if the Secretary makes a written determination that such loans or loan guarantees are necessary to preserve the fiscally sound operation of the health maintenance organization and to protect against the risk of insolvency of the health maintenance organization and, within 30 days of the making of such loans or loan guarantees, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the loans or loan guarantees and a copy of the written determination made with respect to the loans or loan guarantees and the reasons for the determination) through September 30, 1979, and \$4,000,000 thereafter"; and

(2) striking out "\$1,000,000" and inserting in lieu thereof "\$1,000,000 (or \$2,000,000 if the Secretary makes a written determination that such disbursements are necessary to preserve the fiscally sound operation of the health maintenance organization and protect against the risk of insolvency of the health maintenance

organization and, within 30 days of such disbursement, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the disbursement and a copy of the written determination made with respect to it and the reasons for the determination) through September 30, 1979, and \$2,000,000 thereafter".

(b)(1) Section 1305(a) is amended by striking out "operating costs" each place it occurs and inserting in lieu thereof "costs of operation".

(2) The second sentence of section 1305(b)(1) is amended by striking out "any fiscal year" and inserting in lieu thereof "any twelve-month period".

(3) The title of section 1305 is amended by striking out "OPERATION COSTS" and inserting in lieu thereof "COSTS OF OPERATION".

(c)(1) Section 1308 is amended by adding at the end the following new subsection:

"(f) The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this title, including taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee."

(2)(A) Subsection (d) of section 1308 is amended (i) by inserting before the period in the first sentence of paragraph (1) the following: "and to take the action authorized by subsection (f)", and (ii) by inserting after "under this title" in the first sentence of paragraph (2) the following: "and to take the action authorized by subsection (f)".

(B) The first sentence of subsection (e) of section 1308 is amended by inserting before the period the following: "and to take the action authorized by subsection (f)".

(d) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1978.

#### LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY HEALTH CARE FACILITIES

SEC. 5. (a) Title XIII is amended by inserting after section 1305 the following new section:

#### "LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY HEALTH CARE FACILITIES

"SEC. 1305A. (a) The Secretary may—

"(1) make loans, from the fund established under section 1308(e), to public and nonprofit private health maintenance organizations for projects for the acquisition or construction of ambulatory health care facilities and for the acquisition of equipment for facilities acquired or constructed under a loan made under this paragraph; and

"(2) guarantee to—

"(A) non-Federal lenders for their loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations, and



“(B) the Federal Financing Bank for its loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations,

the payment of principal and interest on such loans.

“(b)(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under subsection (a) for an ambulatory health care facility may not exceed \$2,500,000.

“(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made or with respect to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriation Acts.

“(3) The authority of the Secretary to make loans under subsection (a) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

“(c) For purposes of this section—

“(1) The term ‘ambulatory health care facility’ means a health care facility for the provision of diagnostic, treatment, and prevention services to ambulatory patients; and

“(2) the term ‘construction’ means the (A) construction of new facilities, (B) alteration, expansion, remodeling, replacement, and renovation of existing facilities, (C) cost of offsite improvements in connection with an activity described in clause (A) or (B), and (D) cost of the acquisition of land in connection with an activity described in clause (A), (B), or (C).”

(b) Section 1313(4) is amended by inserting before the period the following: “or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities”.

#### CONTINUING DEVELOPMENT ASSISTANCE

SEC. 6. Section 1304(b) is amended by adding after paragraph (3) the following new paragraph:

“(4) A health maintenance organization which is a qualified health maintenance organization within the meaning of section 1310(d) may receive, in accordance with paragraph (1), a grant, contract, or loan guarantee for the expansion of its services or the significant expansion of its membership or the area served by it.”.

#### TRAINING AND TECHNICAL ASSISTANCE

SEC. 7. (a) Title XIII is amended by adding at the end thereof the following new section:

#### “TRAINING AND TECHNICAL ASSISTANCE

“SEC. 1317. (a)(1) The Secretary shall establish a National Health Maintenance Organization Intern Program (hereinafter in this subsection referred to as the ‘Program’) for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. Under the Program the Secretary may directly provide internships for such training and may make grants to or

enter into contracts with health maintenance organizations and other entities to provide such internships.

"(2) No internship may be provided by the Secretary and no grant may be made or contract entered into by the Secretary for the provision of internships unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form and contain such information, and be submitted to the Secretary in such manner, as the Secretary shall prescribe. Section 1306 does not apply to an application submitted under this section.

"(3) Internships under the Program shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the recipients of the internships as the Secretary deems necessary. An internship provided an individual for training at a health maintenance organization or any other entity shall also provide for payments to be made to the organization or other entity for the cost of support services (including the cost of salaries, supplies, equipment, and related items) provided such individual by such organization or other entity. The amount of any such payments to any organization or other entity shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the organization or other entity for establishing and maintaining its training programs.

"(4) Payments under grants under the Program may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

"(b) The Secretary shall provide technical assistance (1) to entities in connection with projects for which assistance is being provided under section 1303 or 1304, (2) to entities intending to become a qualified health maintenance organization within the meaning of section 1310(d), and (3) to health maintenance organizations. The Secretary may provide such technical assistance through grants to public and nonprofit private entities and contracts with public and private entities.

"(c) The authority of the Secretary to enter into contracts under subsections (a) and (b) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts."

(b) Section 1309(a) is amended by striking out "and 1304(b)" and inserting in lieu thereof "1304(b), and 1317".

(c) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1978.

#### EMPLOYEE HEALTH BENEFIT PLANS

SEC. 8. (a) Section 1310(c) is amended by adding at the end the following: "Each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required and which is required by subsection (a) to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions."

(b) Clauses (1) and (2) of section 1310(b) are amended to read as follows.

"(1) one or more of such organizations provides basic health services through physicians or other health professionals who are

members of the staff of the organization or a medical group (or groups), and

"(2) one or more of such organizations provides basic health services through (A) an individual practice association (or associations), or (B) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization,".

#### FINANCIAL DISCLOSURE; ENROLLMENT PROTECTION

SEC. 9. (a) Title XIII as amended by section 7 is amended by adding at the end the following new section:

#### "FINANCIAL DISCLOSURE

"SEC. 1318. (a) Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

"(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

"(2) The information required to be reported under section 1124 of the Social Security Act by disclosing entities and the information required to be supplied under section 1902(a)(38) of such Act.

"(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

"(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

"(B) any furnishing for consideration of goods, services (including management services, but excluding health services provided to members by staff, medical group (or groups), individual practice association (or associations), or any combination thereof), or facilities between the health maintenance organization and a party in interest; and

"(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

"(b) For the purposes of this section the term 'party in interest' means:

"(1) any director, officer, partner, or employee of a health maintenance organization, any person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

"(2) any entity in which a person described in paragraph (1)—

"(A) is an officer or director;



"(B) is a partner (if such entity is organized as partnership);

"(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

"(D) has a mortgage, deed of trust, note, on other interest valuing more than 5 per centum of the assets of such entity;

"(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

"(4) any member of the immediate family of an individual described in paragraph (1).

"(c) Each health maintenance organization shall make the information reported pursuant to subsection (a) available to its enrollees upon reasonable request.

"(d) The Secretary shall, as he deems necessary, conduct an evaluation of transactions reported to the Secretary under subsection (a)(3) for the purpose of determining their adverse impact, if any, on the fiscal soundness and reasonableness of charges to the health maintenance organization with respect to which they transpired. The Secretary shall evaluate the reported transactions of not less than five, or if there are more than twenty health maintenance organizations reporting such transactions, not less than one-fourth of the health maintenance organizations reporting any such transactions under subsection (a)(3).

"(e) The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

"(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d);

"(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) with such standards and norms;

"(3) what action, if any, the Secretary considers necessary under section 1312 with respect to health maintenance organizations evaluated under subsection (d).

"(f) Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

"(g) Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) shall be ineligible for any Federal assistance under this title until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 1310.

"(h) Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than \$25,000 or imprisoned for not more than five years, or both."

(b) Section 1301(c)(3) is amended (1) by inserting "(A)" after "(3)", and (2) by inserting before the semicolon a comma and the following: "and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act in accordance with procedures approved under regulations promulgated by the Secretary".

#### ORGANIZATION REQUIREMENTS

SEC. 10. (a) Section 1301(b) is amended (1) by inserting "except in the case of basic health services provided a member who is a full-time

student (as defined by the Secretary) at an accredited institution of higher education," after "(C)" in paragraph (1), and (2) by inserting "unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education," after "community rating system" in the second sentence of paragraph (2).

(b) Section 1301(c)(1) is amended (1) by inserting "(A)" after "(1)", and (2) by inserting before the semicolon a comma and the following: "and (B) have administrative and managerial arrangements satisfactory to the Secretary".

(c) Section 1301(c)(6) is amended (1) by striking out "(6)" and inserting in lieu thereof "(6)(A) in the case of a private health maintenance organization," (2) by redesignating clauses (A) and (B) as subclauses (i) and (ii), respectively, and (3) by inserting before the semicolon a comma and the following: "and (B) in the case of a public health maintenance organization, have an advisory board to the policymaking body of the public entity operating the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization."

#### REQUIREMENTS FOR THE PROVISION OF SERVICES

SEC. 11. (a) Paragraph (3) of section 1310(b) is amended to read as follows:

"(3)(A) Except as provided in subparagraph (B), the services of a physician which are provided as basic health services shall be provided through—

"(i) members of the staff of the health maintenance organization,

"(ii) a medical group (or groups),

"(iii) an individual practice association (or associations),

"(iv) subject to subparagraph (C), physicians or other health professionals who have contracted with the health maintenance organization for the provision of such services, or

"(v) any combination of such staff, medical group (or groups), individual practice association (or associations), or physicians or other health professionals under contract with the organization.

"(B)(i) Subparagraph (A) does not apply to the provision of the services of a physician—

"(I) which the health maintenance organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or

"(II) which are provided a member of the organization in a manner other than that prescribed by subparagraph (A) because of an emergency which made it medically necessary that the service be provided to the member before it could be provided in a manner prescribed by subparagraph (A).

"(ii) In the forty-eight-month period beginning after the month in which a health maintenance organization becomes a qualified health maintenance organization (within the meaning of section 1310(d)), the organization may provide the services of physicians through an entity which but for the requirement of section 1302(4)(C)(i) would be a medical group for the purposes of this title. After the expiration



of such period, the organization may provide physician services through such an entity only if authorized by the Secretary in accordance with regulations which take into consideration the unusual circumstances of such entity.

“(C) After the expiration of the first four fiscal years of a health maintenance organization beginning after the month in which it became a qualified health maintenance organization (within the meaning of section 1310(d)), the organization may not enter into contracts with physicians other than members of staff, medical groups, or individual practice associations if the amounts paid under such contracts for basic and supplemental health services provided by physicians exceed 15 per centum of the total estimated amount to be paid in such fiscal year by the health maintenance organization to physicians for the provision of basic and supplemental health services by physicians, or, if the health maintenance organization principally serves a rural area, 30 per centum of such amount, except that this subparagraph does not apply to the entering into contracts for the purchase of physician services through an entity which, but for the requirements of section 1302(4)(C)(i), would be a medical group for the purposes of this title.

“(D) Contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services shall include such provisions as the Secretary may require (including provisions requiring appropriate continuing education).

“(E) For purposes of this paragraph the term ‘health professional’ means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.”.

(b) Section 1301(b)(1) is amended by adding at the end the following: “The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen’s compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.”.

(c) The second sentence of section 1301(b)(4) is amended to read as follows: “A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic and supplemental health services other than through the organization if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.”.

(d) Section 1301(b) is amended by adding at the end the following new paragraph:

"(5) To the extent that a natural disaster, war, riot, civil insurrection, or any other similar event not within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources."

(e) Section 1302(1) is amended by inserting before the second sentence the following: "Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence."

#### ADMINISTRATION OF PROGRAM

SEC. 12. (a)(1) Subsection (h) of section 1310 is repealed.

(2) Subsection (c) of section 1312 is repealed.

(b) Section 1306(b)(2) is amended by inserting "in the case of an application for assistance under section 1304, 1305, or 1305A," before "he determines".

(c) Section 1306(b) is amended by adding at the end the following new sentence: "In determining, for purposes of paragraph (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary shall not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant."

#### PROGRAM MANAGEMENT EVALUATION

SEC. 13. Section 1314 is amended by adding at the end thereof the following new subsection:

"(d) The Comptroller General shall evaluate the adequacy and effectiveness of the policies and procedures of the Secretary for the management of the grant and loan programs established by this title and the adequacy of the amounts of assistance available under such programs and shall report to the Congress the results of such evaluation not later than May 1, 1979."

#### AMENDMENTS TO THE SOCIAL SECURITY ACT

SEC. 14. (a)(1) Section 1902(a)(4) of the Social Security Act is amended (A) by striking out "and" at the end of clause (A), and (B) by inserting before the semicolon a comma and the following: "and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer

or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code".

(2)(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) shall take effect one hundred and eighty days after the date of the enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the requirement added by the amendments made by paragraph (1), such amendments shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(b) Section 1122 of the Social Security Act is amended—

(1) by striking out "or health maintenance organization" each place it occurs,

(2) by striking out "or health maintenance organizations" each place it occurs, and

(3) by striking out "or organization, or of any facility of such organization," in subsection (d)(2).

(c) Section 1903(m)(1)(B) of the Social Security Act is amended by striking out "shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions".

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

HARLEY O. STAGGERS,  
PAUL G. ROGERS,  
DAVID E. SATTERFIELD,  
RICHARDSON PREYER,  
JAMES H. SCHEUER,  
TIM LEE CARTER,  
JAMES T. BROYHILL,

*Managers on the Part of the House.*

EDWARD KENNEDY,  
GAYLORD NELSON,  
CLAIBORNE PELL,  
WILL D. HATHAWAY,  
HARRISON A. WILLIAMS, Jr.,  
RICHARD S. SCHWEIKER,  
J. JAVITS,

JOHN CHAFEE,  
*Managers on the Part of the Senate.*





## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2534) to revise and extend the provisions of Title XIII of the Public Health Service Act relating to health maintenance organizations, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### EXTENSION OF PROGRAM

The Senate bill provides for extension of authorizations for appropriations of \$35 million for fiscal year 1979, \$65 million for fiscal year 1980, and \$70 million for fiscal year 1981 (section 8).

The House amendment provides authorizations of appropriations of \$25 million for fiscal year 1979, \$63 million for 1980 and \$63 million for 1981 (sections 2 and 15).

The conference substitute as a compromise specifies that authorizations of appropriations shall be available at a level of \$31 million for fiscal year 1979, \$65 million for 1980 and \$68 million for 1981. Loan authority is extended through fiscal year 1981 (section 2).

### INITIAL DEVELOPMENT

The Senate bill amends section 1304(f)(2)(a) to increase the maximum dollar limit for initial development project grants, contracts, and loan guarantees from \$1 million to \$2 million effective September 30, 1979. It also deletes the provision of existing law regarding increased assistance for health maintenance organizations (HMO's) providing services in additional service areas (section 3(a)).

The House amendment modifies the support available to organizations for initial development by providing that an HMO would continue to be eligible to receive up to \$1 million to support its establishment and it would be eligible to receive up to \$600,000 to support each significant expansion of membership or areas served. A grant awarded under this section would be available for up to three years (section 5(b) and (c)).

The conference substitute conforms to the Senate amendment with the added provision that a grant awarded under this section would be available for up to three years (section 3).

#### INITIAL OPERATING LOANS AND LOAN GUARANTEES

The Senate bill amends section 1305(b)(1) to increase the aggregate dollar limit for HMO initial operating loans and loan guarantees from \$2.5 million to \$5 million with a secretarial certification of need required for its use prior to September 30, 1979. The bill also increases the amount of operating loans which may be dispensed to an HMO in any one year from \$1 million to \$2 million with similar restrictions (section 3(b)).

The House amendment expands the support which may be provided to an HMO for its initial costs of operation to an aggregate \$4 million. The support would include capital costs such as the costs of acquiring equipment. In any one year an HMO would be limited to \$2 million of loan or loan guarantee support. The Secretary is authorized to take such actions as he deems appropriate to protect the interests of the United States in the event of a default on a loan made or guaranteed.

The conference substitute as a compromise specifies that the total amount available for the costs of operation would be increased to \$4.5 million in total and \$2 million annually, to be provided with the Secretarial certification in the Senate bill during fiscal year 1979. It also includes a provision related to the Secretary's authority to protect the interest of the United States (section 4).

#### LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY HEALTH CARE FACILITIES

The Senate bill adds a new authority for loans and loan guarantees to assist an HMO in meeting the cost of equipping, constructing, acquiring, or renovating ambulatory care facilities for HMO's and entities intending to become HMO's. No dollar limitation would be applied to the assistance to be provided for ambulatory care facility under this provision. (Section 4 (a) and (b)).

The House amendment adds a new section after section 1305 to provide loans and loan guarantees to qualified HMO's for the acquisition and construction of ambulatory care facilities and for the acquisition of equipment for facilities acquired or constructed. The Secretary may make loans to public and non-profit private HMO's; the Secretary may also guarantee the payment of principal and interest on loans for private HMO's for projects which serve medically underserved areas. The aggregate amount of principal of loans made or guaranteed under this section may not exceed \$2.5 million (section 9).

The conference substitute conforms to the House amendment with a loan limitation of \$2.5 million for each health care facility (section 5).

#### CONTINUING DEVELOPMENT ASSISTANCE

The Senate bill contains a provision, not included in the House amendment, which expands the purposes for which assistance for initial development projects may be made to include "improvement of services." Such assistance may be provided only to entities which



demonstrate the capability of maintaining continued fiscal soundness (section 7).

The conference substitute as a compromise specifies that initial development grants, contracts, and loan guarantees be provided for expansion of services. Conferees note that support under this program should be provided an HMO for the addition of a new service being directly provided by the HMO and not for routine adjustment in services (section 6).

#### TRAINING AND TECHNICAL ASSISTANCE

##### *Training*

The Senate bill creates a new section which requires the Secretary to establish a National Health Maintenance Organization Intern Program for the purpose of training qualified HMO administrators and managerial personnel. The Secretary may award payments for internships or for the costs of internships to:

- (1) an individual with approved application; or
- (2) an HMO or other entity which submits and has approved an application for a grant under this section.

Payments to HMO's or other entities can be used only to cover the costs of the internship limited to such amounts as the Secretary finds necessary to cover the costs incurred by the HMO or other entity under the internship program. Payments to individuals receiving training in the internship program are limited to a maximum of \$2,000 per month, per individual excluding relocation costs, and the term of individual internship payments is limited to 12 months. Authorizations for the National HMO Intern Program are \$2 million for fiscal year 1979; \$2 million for fiscal year 1980; \$3 million for fiscal year 1981 (section 9).

The House amendment creates a new section which requires the Secretary to establish a National Health Maintenance Organization Intern Program for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. The Secretary may provide these internships directly or may make grants to or enter into contracts with health maintenance organizations and other entities to provide the internships. The program will provide stipends and allowances for the recipients of the internships and grants and contracts to health maintenance organizations and other entities for the cost of support services provided to recipients of the internships by the organization or the entity. The amount of any payment to an organization or an entity shall be determined by the Secretary and shall bear direct relationship to the reasonable cost of the organization or entity for establishing and maintaining the training program. Funds for these internships are provided in the authorizations of appropriations in section 1309(a). This provision shall be effective for fiscal years on or after October 1, 1979 (section 10(a)).

The conference substitute conforms to the House amendment, except that the authorization for the program will begin in fiscal year 1979 (section 7(a)). The conferees note that the purpose of the training is to enable the individual who participates to assume an administrative position within an HMO, or to improve capabilities and skills in their current position with an HMO.

### *Technical assistance*

The Senate bill amends section 1307 to authorize the Secretary to make grants to public or nonprofit private entities and to enter into contracts with private entities for (1) the provision of technical assistance to projects and HMO's and (2) assistance in making determinations under sections 1308 (general provisions relating to loan guarantees and loans), 1310 (employees health benefits plan), and 1312 (regulation of HMO's) (section 11(b)).

The House amendment creates a new section which requires the Secretary to provide directly or through contracts or both technical assistance to (1) entities engaged in surveys or other activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations; (2) entities engaged in the planning for the initial development of health maintenance organizations; (3) entities engaged in the initial development of health maintenance organizations and (4) health maintenance organizations in connection with their operation (section 10).

The conference substitute requires the Secretary to provide technical assistance, through grants to public and nonprofit private entities and contracts with private entities, (1) to entities in connection with projects for which assistance is being provided under section 1303 or 1304, (2) to entities intending to become a qualified health maintenance organization within the meaning of section 1310(d), and (3) to health maintenance organizations (section 7(b)).

## EMPLOYEE HEALTH BENEFIT PLANS

### *Payroll deductions for HMO premiums*

The Senate bill requires each employer participating in the dual choice program required under the law to arrange for the deduction of HMO premiums from an employee's salary providing the employee consents to this arrangement and the employer has the demonstrated capability of making payroll deductions (section 6(a)).

The House amendment provides that each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefit plan to which an employee's contributions is not required and which is required to offer his employee the option of membership in a qualified health maintenance organization would be required to arrange, upon the request of the employee who exercises such option, for the employee's contribution for such membership to be paid through payroll deductions (section 7).

The conference substitute conforms to the House amendment; however, consent, and not the request, of an employee is required (section 8(a)).

### *Clarifying amendments for dual choice program*

The Senate bill contains a provision, not included in the House amendment, which amends section 1310 to clarify the distinction between the two kinds of qualified HMO's an employer must offer his employees as an option under the dual choice programs if one or more qualified HMO's provides services in the area in which the employees' reside (section 6(b) and (c)).

The conference substitute conforms to the Senate bill (section 8(b)).

## FINANCIAL DISCLOSURE; ENROLLMENT PRACTICES

*Financial disclosure*

The Senate bill creates a new section 5 which requires each HMO to file annually with the Secretary financial information in such form as the Secretary may require and, if an organization is related to the HMO by common ownership or control, a consolidated financial statement must be filed. The financial information to be filed must include:

(1) Information, as required by the Secretary demonstrating that the HMO has a fiscally sound operation.

(2) A description of transactions, as specified by the Secretary, between the HMO and a party in interest.

The term "party-in-interest" is defined as:

(1) any director, officer, employee, partner, person who is directly or indirectly the beneficial owner of more than five percent of the equity, or person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than five percent of the assets (and in the case of a HMO organized as a nonprofit corporation, an incorporator for member of such corporation under the applicable State corporation law) of the HMO;

(2) any entity in which any director, officer, employee, partner, person who is directly or indirectly the beneficial owner of more than five percent of the equity, or person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than five percent of the assets (and in the case of an HMO organized as a nonprofit membership corporation, an incorporator or member of such corporation under the applicable State corporation law) of the HMO:

(a) is an officer or director;

(b) is a partner (if such entity is organized as a partnership);

(c) has directly or indirectly a beneficial interest of more than five percent of the entity; or

(d) has a mortgage, deed of trust, note, or other interest valuing more than five percent of the assets of such entity;

(3) any person directly or indirectly controlling, controlled by, or under common control with the HMO. Each HMO must make available to its enrollees, upon reasonable request, the contents of its annual financial information statement. The Secretary must, as he deems necessary, conduct an evaluation of reported transactions between HMO's and parties-in-interest for the purpose of determining their adverse impact, if any, on the fiscal soundness and reasonableness of charges to the HMO. The reported transactions of at least five HMO's, or if there are more than 20 HMO's reporting such transactions, at least one-fourth shall be evaluated. The Secretary must file an annual report to Congress which includes:

(1) An enumeration of standards and norms used to make required evaluations under section 1318;

(2) An assessment of the extent to which each HMO evaluated by the Secretary conforms to such standards and norms; and



(3) Any actions the Secretary considers necessary, under his authority to regulate HMO activities under section 1312, with respect to those HMO's evaluated under this section.

Nothing in this section can be construed to give the Secretary the authority to approve or disapprove the premium rates charged by any HMO. Failure to file the annual financial information statement shall result in being ineligible to receive any Federal assistance under title XIII.

The House amendment amends section 1310(d) to provide that all qualified health maintenance organizations (1) must provide the Secretary with ownership and related information, (2) must provide the Secretary with assurances satisfactory to the Secretary that the terms of each transaction between the health maintenance organization and a party in interest will be at least as favorable to the health maintenance organization as if the transaction was between the health maintenance organization and a person who was not a party in interest, and (3) must make available to its members the information reported by the organization pursuant to (1) and (2). The ownership information required is identical to that required by section 1124 and 1902 (a)(8) of the Social Security Act (added by Public Law 95-142, the Medicare-Medicaid Anti-Fraud and Abuse Amendments). The related information which may be required by the Secretary, at such time as the Secretary shall prescribe, is information (1) to demonstrate that the health maintenance organization has a fiscally sound operation and (2) respecting any transaction between the health maintenance organization and a party in interest. The term "party in interest" means (1) a person with an ownership or control interest (as defined in section 1124 (a) (3) of the Social Security Act) in the health maintenance organization, (2) a managing employee (as defined in section 1126(b) of the Social Security Act) of the organization, (3) any entity with respect to which an individual described in (1) or (2) is a person with an ownership or control interest (as so defined) or managing employee (as so defined), and (4) any member of the immediate family of an individual who is a person described in (1) or (2). This section also requires the Secretary to include in the annual report required by section 1315 a summary of evaluations made of the information and a description of any action taken as a result of such evaluation.

The section also amends section 1306(b) to require that an application from a grant, contract, loan or loan guarantee under Title XIII contain assurances satisfactory to the Secretary that the organization will comply with the requirements added to section 1310(d) by section 12 of the bill. The section also amends section 1312(a) to require the Secretary to take the actions authorized by section 1312 (b) if he determines that an entity which received a grant, contract, loan or loan guarantee under Title XIII as a health maintenance organization or which was included in the health benefits plan offered to employees pursuant to section 1310(d) by this section (section 12).

The conference substitute conforms to the Senate bill with modifications in the frequency when information must be filed and the definition of "party in interest." It also includes the House requirement for the submission of ownership information (section 9(a)).

*Enrollment practices*

The Senate bill requires the HMO to provide the Secretary with assurances satisfactory to him that no membership enrollment shall occur at an individual's place of residence (section 2(c)).

The House amendment provides that an HMO shall carry out enrollment of members who are entitled to medical assistance under State plan approved under Title 19 of the Social Security Act in accordance with procedures approved under regulations promulgated by the Secretary (section 4(c)).

The conference substitute conforms to the House amendment (section 9 (b)).

## ORGANIZATION REQUIREMENTS

*Experience rating for students*

The House amendment contains a provision not included in the Senate bill which modifies section 1301(b) by allowing the HMO to provide services to full time students at an accredited institution of higher education for a payment that is not fixed under a community rating system (section 4 (a)).

The conference substitute conforms to the House amendment (section 10(a)).

*Administrative arrangements*

The House amendment contains a provision not included in the Senate bill which requires that an HMO has certain administrative and managerial arrangements and capabilities (section 4(b)).

The conference substitute as a compromise specifies that an HMO shall have administrative and managerial arrangements satisfactory to the Secretary (section 10(b)).

*Requirements for public HMO's*

The House amendment contains a provision, not included in the Senate bill, which amends section 1301(c)(6) to exclude public HMO's from the requirement that at least one third of the membership of the policymaking body of an HMO be members of the organization and that the body include equitable representation from medically underserved populations served by the organization. Under the amendment a public HMO must have an advisory board which meets these requirements and this board may be delegated policymaking authority for the organization (section 4(d)).

The conference substitute conforms to the House amendment.

*Waiver of policymaking body requirements*

The House amendment contains a provision, not included in the Senate bill, which amends section 1310(d) to include as a qualified health maintenance organization certain entities which have received a waiver of the requirements of section 1301(c)(6) and which meet all other requirements prescribed by section 1301 (b) and (c) and the reporting requirements prescribed by section 1310(d). The Secretary of HEW may, upon application, grant a waiver to such entities upon such terms and conditions as the Secretary may determine appropriate. Entities eligible to apply for this waiver must notify the Secretary of their intent to apply before the expiration of 180 days after the date of the enactment of this bill and must make their application

before the expiration of 18 months after the enactment of this bill. An entity which receives this waiver may not receive a grant, contract, loan or loan guarantee under title XIII. Entities eligible to apply for a waiver are health maintenance organizations (as defined in regulations promulgated under section 1122 of the Social Security Act and in effect on the day before the date of enactment of this bill) (1) which are operated (but not as a separate legal entity) either by a commercial insurance carrier or a nonprofit carrier which provides hospital service benefits or medical or surgical benefits, or both, (2) with respect to which Federal financial assistance has not been provided under Title XIII, and (3) which on January 1, 1974 were engaged in providing basic health services (as defined in regulations promulgated under section 1122) to the organization's members. As a condition of approving the entity as a qualified health maintenance organization, the Secretary may alter the application of section 1310(b) to the service area of the entity. The Secretary may require the health benefits plan of each employer subject to section 1310(a) which has at least 25 employees residing in the service area of the entity (which is the qualified health maintenance organization) to include in their employee's health benefits plan at least two qualified health maintenance organizations which provide service in the same service area in the same manner when at least two such organizations are willing to be included in the employee's health benefits plan (section 14).

The conference substitute conforms to the Senate bill.

#### REQUIREMENTS FOR THE PROVISION OF SERVICES

##### *Physicians' services*

The Senate bill would modify provisions of existing law and limit contracting for health services by the health maintenance organization only to physician services and not to the services of all health professional services. It provides that an HMO, cannot, in any of its fiscal years after the end of its fourth fiscal year of operation, enter into contracts with physicians other than members of staff, medical groups or individual practice associations (IPA's), if amounts paid for contract physician services exceed 15 percent of the total estimated amount to be paid by an HMO to physicians for the provision of physician services, or 30 percent of such amounts if the HMO principally serves a rural area. The bill also specifies that an HMO may, during the 36 month period beginning with the month following the month in which the HMO becomes qualified, provide physician services through an entity which would be a medical group except for certain requirements in law defining the amount of time the group has to devote to delivering services to HMO members (section 2(a)).

The House amendment would allow an HMO up to five years to reduce its reliance on contract with physicians other than staff physicians or those who are not in medical groups or individual practice associations. At any time the amount paid to such physicians could not exceed 50 percent of the total amount paid for services of physicians and in the fifth and succeeding years the amount could not exceed the 15 percent (30 percent in rural areas). The amendment specifies that an HMO may, during a 48th month period, beginning with the month following qualification, provide physician services through an



entity which would be a medical group except for certain requirements in the law defining the amount of time the group has to vote to delivering services to HMO members (section 3(b)).

The conference substitute conforms to the Senate bill; however, it contains the provision in the House amendment which would allow an HMO up to 48 months to use medical groups that do not meet the requirements defining the amount of time the group has so devote to delivering services to HMO members. The conferees intend that the Secretary in reviewing the application of an entity for qualification as a health maintenance organization carefully consider that organization's ability to reduce its reliance on contracting for physician services in other than the manner prescribed by law within its first four fiscal years (section 11(a)).

#### *Workmen's compensation and other insurance*

The Senate bill amends section 1301 to authorize reasonable limitations and exclusions with respect to benefits and the financial liability for care for illness, injury or conditions covered by a workmen's compensation statute. (Section 5).

The House amendment amends section 1301(b)(1) to permit the HMO to seek reimbursement for the cost of services provided to a member who is entitled to benefits under a workmen's compensation law or an insurance policy. (section 3(a)).

The conference substitute conforms to the House amendment (section 11(b)).

#### *Services provided by other than the HMO*

The Senate bill specifies that HMO members will be reimbursed by the HMO for expenses incurred in securing emergency health services not provided by the HMO if it was medically necessary that those services be provided before the member could secure them through the HMO (section 2(b)).

The House amendment amends section 1301(b)(4) by removing financial responsibility of an HMO for services provided by another organization to a member of the HMO if the member intentionally left the area served by the HMO for the purpose of securing those services (section 3(c)).

The conference substitute as a compromise specifies that a member of an HMO shall be reimbursed by the organization for his expenses in securing basic health services other than through the organizations if services were medically necessary and immediately required because of unforeseen illness, injury or condition (section 11(c)).

#### *Limitation and exclusion of benefits*

The Senate bill amends section 1301(b) to authorize reasonable limitations and exclusions with respect to the services which HMO's are not able to deliver because of natural disasters, war or insurrection (section 5).

The House amendment provides that a health maintenance organization is only required to make a good faith effort to provide health services in the event that major disaster, war, riot, civil insurrection, or any other event not reasonably within the control of the HMO results in the facilities, personnel, or financial resources of the HMO not being available to provide or arrange for the provision of health services to members (section 3(d)).

The conference substitute conforms to the House amendment; however, the provision would be limited to natural disaster, war, riot, civil insurrection of any other similar event not within the control of the HMO (section 11(d)). The conferees note that labor disputes are not intended to be included in the limitations and exclusions under this provision.

#### *Unusual and infrequent services*

The Senate bill would allow an HMO to exclude benefits with respect to unusual and infrequent medical services or procedures not necessary to protect the health of the member (section 5).

The House amendment provides that an HMO is not required to provide services which the Secretary determines, upon the application of an HMO, to be unusual or infrequently provided and are not necessary for the protection of individual health (section 3(e)).

The conference substitute conforms to the House amendments (section 11(e)).

### ADMINISTRATION OF PROGRAM

#### *Program organization*

The Senate bill repeals section 1310(h) which provides that the duties and functions of the Secretary in making determinations as to whether an organization is a qualified HMO shall be administered through the Assistant Secretary for Health in the Office of the Assistant Secretary for Health and the administration of such duties and functions shall be integrated with the administration of section 1312(a), and 1312(c) which provides that the Secretary, acting through the Assistant Secretary for Health, shall administer sections 1312(a) and 1312(b) in the Office of the Assistant Secretary for Health. (section 11(c) and (d)).

The House amendment repeals section 1312(c) and amends section 1310(h) to delete the requirement that the qualification and compliance functions be located in the Office of the Assistant Secretary for Health (section 11 (a) and (b)).

The conference substitute conforms to the Senate bill (section 12(a)).

#### *Application requirement*

The Senate bill repeals section 1306(b)(2) which provides that the Secretary may not approve an application for a grant, contract, loan, or loan guarantee under this title unless he determines that the applicant making the application would not be able to complete the project or undertaking for which the application is submitted without the assistance requested (section 11(a)).

The House amendment would allow grants and contracts for HMO feasibility studies regardless of the financial position of the applicant; all other support would be provided to organizations only if the applicant would not be able to complete the project without Federal assistance (section 5(a)).

The conference substitute as a compromise conforms to the House amendment and in addition amends section 1306(b) by providing that the Secretary, in determining for purposes of section 1306(b)(2) whether an applicant would be able to complete a project or undertaking without the assistance applied for, will not consider any asset of applicant the obligation of which for such undertaking or project

would jeopardize the fiscal soundness of the applicant. The additional sentence clarifies that in approving applications for grants, contracts, loans, and loan guarantees under sections 1304 and 1305, the Secretary may not require an applicant to use all available assets for the project if that requirement would jeopardize the fiscal soundness of the applicant (section 12 (b) and (c)).

#### PROGRAM MANAGEMENT EVALUATION

The Senate bill requires the Comptroller General to evaluate the adequacy and effectiveness of the policies and procedures for the management of the grant and loan programs in Title XIII and the adequacy of the amount of assistance available under Title XIII and to report to the Congress the results of the evaluation not later than May 1, 1979 (section 12).

The House amendment has no similar provision.

The conference substitute conforms to the Senate bill (section 13).

#### AMENDMENTS TO THE SOCIAL SECURITY ACT

##### *Conflict of interest*

The House amendment contains a provision, not included in the Senate bill, which extends the prohibitions of sections 207 and 208 of title 18, United States Code, State or local officers or employees who are responsible for the expenditure of substantial amounts of Medicaid funds, to each individual who formerly was such an officer or employee and to each partner of such an officer or employee (section 13(a)).

The conference substitute conforms to the House amendment (section 14(a)).

##### *Section 1122 review*

Section 1122 of the Social Security Act provides for review by State Health Planning Agencies of capital expenditures proposed to be made by health care facilities (such as hospitals and nursing homes) and health maintenance organizations. The coverage of health maintenance organizations includes its establishment and the development of its outpatient facilities and services.

The House amendment contains a provision, not included in the Senate bill, which amends section 1122 to provide that the establishment of an HMO will not be covered and that the development of outpatient facilities and services will be covered only to the extent that a health care facility would be covered for the same activity (section 13(b)).

The conference substitute conforms to the House amendment so that HMO's will be covered equally with other health care facilities (section 14(b)).

##### *Conforming amendments*

The House amendment contains a provision, not included in the Senate bill, which makes conforming changes in section 1903(M)(1)(B) of the Social Security Act regarding the administration of the HMO program within HEW (section 13(c)).

The conference substitute conforms to the House amendment (section 14(c)).

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FUNDING UNDER OTHER AUTHORITIES FOR THE PROVISION OF HEALTH  
SERVICES ON A PREPAID BASIS

Section 1313 of the Public Health Service Act limits to title XIII the source of funding for health maintenance organizations and other entities which provide, directly or indirectly, health services to a defined population on a prepaid basis.

The House amendment contains a provision, not included in the Senate bill, which provides that section 1313 does not prohibit the use of funds appropriated under section 319 or 330 of the Public Health Service Act for grants to an entity, other than a health maintenance organization, for the planning and development of health services to be provided on a prepaid basis or for the provision of health services on a prepaid basis (section 8).

The conference substitute conforms to the Senate bill.

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